

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, October 3, 2017  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### CALL TO ORDER

Mayor Tran called the joint meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo and Nuñez

**ABSENT:** Councilmember Phan was absent at roll call. He arrived shortly thereafter in the Closed Session.

### CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that Mayor Tran would recuse himself on Closed Session agenda item (e).

City Council then convened in Open Session at 7:26 PM with all members present.

### ANNOUNCEMENT

The City Attorney stated there was no reportable action out of Closed Session.

### PLEDGE

Boy Scouts Troop No. 92 presented the flags and led all in the pledge of allegiance.

### INVOCATION

Councilmember Nuñez introduced Pastor Jethroe Moore to provide the invocation prayer.

### PRESENTATIONS

Mayor Tran presented the following items:

Proclaimed Fire Prevention Week for October 8 – 14, 2017 accepted by Deputy Fire Chief/Fire Marshal Albert Zamora and Fire Chief Rob Mihovich.

Proclaimed Freedom from Workplace Bullies Week for October 15 – 21, 2017, accepted by Human Resources Director Tina Murphy.

Proclaimed Hispanic Heritage Month for the month of October 2017, accepted by Councilmember Bob Nuñez and Public Works Director Nina Hawk.

Commended Tai Ji Mien Academy participants for their competition in Qi Gong marshal arts. The group showed a video of their sport on the overhead screen.

### PUBLIC FORUM

Voltaire Montemayor, Milpitas resident, supported comments by Pastor Moore, and those who received commendations. He urged being proactive on peace and finding positive ways.

William Au, Sunnyhills resident, spoke on behalf of residents at the apartment complex. He was hoping to get an update on their residence situation.

Gail Hosner, resident, hoped the City was outreaching to non-profit organizations to see if any of those were interested in purchasing the Sunnyhills Apartments complex. She did not see the city working with the tenants. Tenant rights and procedures needed to be understood by residents.

Le Nguyen, Sunnyhills resident, spoke to the Council in Vietnamese language, asking Council to help the residents have peace of mind over their future.

Mr. Jung, Sunnyhills resident, spoke to the Council in Vietnamese language, had been here many times pleading with the Council to do something to help the residents, to find a place to live and not become homeless.

Hang Nguyen, resident, spoke to the Council in Vietnamese language, asked for help to remain in the Sunnyhills Apartments complex.

Cai Tran, Sunnyhills resident, spoke to the Council in Vietnamese language, as a tenant and resident of Milpitas, agreed with all comments before him and asked for help to get a place to live.

Hien La, Sunnyhills resident, said she tried to reach the Mayor by phone and left a message but had not heard back from him. They continued to come back to City Council seeking help, for the situation at Sunnyhills. All the people there - especially seniors - needed help.

Thi Van Pham, resident, spoke to the Council in Vietnamese language, as a Sunnyhills tenant, was looking for solutions for the apartment complex, hoping for anything they could do.

Ms. Qui, resident, spoke to the Council in Vietnamese language, said she and her husband lived at Sunnyhills for 11 years, and at their age would not want to move. They needed help from the City.

Charlene Lee, San Jose resident, referred to past speakers and the Milpitas Police Department and past activity. She complained about the City Council, City Manager, City Clerk and corruption.

Christina and daughter, of Sunnyhills Apartments, spoke up for residents and their family. They hoped Council would help save their homes, and they loved living in Milpitas.

Trieu Le, resident, spoke about those who lived at Sunnyhills Apartments. He was very concerned about housing and where they would go after 10 months and 15 days. Residents were very worried about their future.

Robert Marini, Milpitas resident, spoke about a group that wanted to present a tiered (water) rate system. He gave his own history on water rates from the past and prior effort on a ballot initiative.

Councilmember Nuñez asked for copy of his information at the podium. Mr. Marini handed to the City Clerk paper copies of what he had presented overhead.

Michael Tsai, resident, commented on affordable housing and the great need in the greater Bay Area. His hat represented his participation in YIMBY (yes in my back yard). He would think about the big picture.

Mr. Bui, Sunnyhills resident, said his family had lived at the apartments for 30 years. If forced to leave the complex, they would have nowhere to go. He asked for help from the City.

Lisa Duong, resident, spoke to the Council in Vietnamese language, said her request was for City leaders to help residents stay living at Sunnyhills. They did not want to suffer.

Councilmember Nuñez said he appreciated the Mayor's meeting with speaker Charlene Lee. He'd heard her speak disparagingly about the Police Chief and others. He asked City Attorney Diaz to meet with her to find out if there was anything City officials should be doing to assist her.

## **ANNOUNCEMENTS**

Acting City Manager Steve Pangelinan noted that Public Works Director Nina Hawk would be leaving the City for a new job and he wanted to note her accomplishments in the Department over the last two years. He announced that current Deputy Director Tony Ndah would serve as Acting Director of Public Works starting the following week.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

## APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Vice Mayor Grilli requested to move agenda item No. 23 (Sister Cities Commission work plan) onto the consent calendar.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

## CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Mayor Tran asked to remove item no. 8 (Resolution – hillside residence solar) from the consent calendar. He asked to move his Item No. 21 (homeless strategy) to the next City Council meeting on October 17.

Councilmember Nuñez requested to remove agenda items no. 9 (Resolution), no. 11 (SCS Engineers amendment), no. 12 (RMC Amendment) and no. 13 (amend Common Interest Agreement) from the consent calendar.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

City Attorney Diaz recommended to have the public hearing agenda item no. 15 heard first. Vice Mayor Grilli agreed and suggested then go to Unfinished Business items and after that, to return to the consent calendar items that were pulled for discussion. Council agreed with the order.

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|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| *1. Council Calendar                  | Accepted City Council calendars for September and October 2017.                                                                                                                                                                                     |
| *2. Meeting Minutes                   | Approved City Council meeting minutes of September 18, 19 and 21, 2017.                                                                                                                                                                             |
| *3. Odor Control                      | Received the monthly update of the odor control report.                                                                                                                                                                                             |
| *4. Donations – Veterans              | Accepted financial donations to the City’s Veterans Commission for the Veterans Car Show on October 16 and the Veterans Appreciation Lunch on November 18, and appropriated the funds received into the Recreation Special Events operating budget. |
| *5. Donation Request MCEE             | Per request from the Milpitas Community Educational Endowment, approved a \$500 donation to the non-profit group for its Mid-Autumn Festival on October 7, 2017.                                                                                    |
| *6. Concert Band funds                | Appropriated \$4,300 from the Recreation Community Concert Band Holding Account to the Performing Arts operating budget.                                                                                                                            |
| *7. Walk with Ease Grant              | Accepted the grant from the California Arthritis Partnership Program and National Recreation and Park Association in the amount of \$2,500 and appropriated the same to the Barbara Lee Senior Center’s operating budget.                           |
| 8. Resolution – hillside home         | This item was removed from the consent calendar but not heard. It would be continued.                                                                                                                                                               |
| 9. Resolution – Classification        | This item was removed from the consent calendar but not heard. It would be continued.                                                                                                                                                               |
| *10. Resolution – Funding for Streets | Adopted Resolution No. 8699 amending the Capital Improvement Program 2017-18 budget for the Street Resurfacing Project 2018 to incorporate a list of projects funded by Senate Bill 1: the Road Repair and Accountability Act.                      |

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| 11. Amendment No. 1 – Agreement with SCS        | This item was removed from the consent calendar but not heard. It would be continued.                                                             |
| 12. Agreement – Agreement with RMC Water        | This item was removed from the consent calendar but not heard. It would be continued.                                                             |
| 13. Amendment No. 1 – Common Interest Agreement | This item was removed from the consent calendar but not heard. It would be continued.                                                             |
| *14. Emergency Repair                           | Received this report of emergency repair of Technology Drive, Project No. 4287, and authorized payment of invoices up to \$750,000 for this work. |
| *23. Sister Cities Commission                   | Added to consent and approved the Sister Cities Commission’s Fiscal Year 2017-18 Work Plan.                                                       |

**PUBLIC HEARING**

- 15. Project at 1992 Tarob Ct.** Planning Director Brad Misner reviewed the project and plans for residential building with zone and map changes needed to allow the proposed development at four addresses, including 1992 Tarob Court in the Transit Area. A General Plan amendment was needed along with other actions to change the land use from industrial use to High Density Transit Oriented Residential Development. The Economic Impact Study did not support a reduction of industrial space and fewer jobs if the change was approved. Mr. Misner described the staff’s recommendation to have a study session on the history of land use decisions.

From applicant The True Life Companies, Ms. Leah Beniston displayed overhead slides, describing the history of the lot layouts at the proposed site. She described the future green walking trail along the Penitencia Creek, near Tarob Ct., as a benefit for new residents.

Mayor Tran re-opened the public hearing and invited speakers from the audience.

Robert Marini, resident, asked about 53 units and what the mixture of bedroom size apartments would be. How many were low income, what were the affordable fees to be paid, and how many parking spaces for each there would be, he asked.

Mr. Misner said the units were all two or three bedroom units. Each unit would have two-car parking in the garage. The developer also would pay 5% of total construction costs into the affordable housing fund.

Voltaire Montemayor, resident, spoke of reducing industrial space to add residential would be a pro-active improvement. More housing would allow the City to compete.

Motion: to close the public hearing, following two speakers

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

City Attorney Diaz asked for disclosure by the City Council of any ex parte communications.

Councilmember Phan: had received additional documents from consultant for the project

Councilmember Barbadillo: none

Councilmember Nunez: none

Vice Mayor Grilli: none

Mayor Tran: met with applicant following the last City Council meeting

Vice Mayor Grilli asked about the jobs-housing ratio, and how it would change with this project. Mr. Misner reported that the loss of 144 jobs was a marginal number. The jobs to housing ratio would go from 1.94 to 1.91 ratio, after the project was built.

Mayor Tran commented on the ratio and other cities. He asked when the TASP gets fully built out and the impacts. Staff was studying that now, to come up with a current projection. The Mayor asked for staff to provide that information to City Council in coming weeks. He wanted to know the average ratio of jobs to residents, and what was healthy around the valley.

Councilmember Nuñez asked the history of the land in this part of the TASP. He asked about the General Plan committee and if it was talking about land use in the TASP area. Mr. Misner explained the two Specific Plans as “carve outs” in the future General Plan.

Councilmember Phan addressed the applicant from True Life Companies, asking for some explanation of figures given on the Fiscal Economic Benefits to Milpitas, including the “no impact on Milpitas Schools” comment. Mr. Phan asked staff more questions about the current General Plan land use designation and the zoning for the site parcels. He was struggling with what makes a good land use conversion. Then, he identified his own criteria for such and how the project would benefit the public by meeting his listed criteria. He was supportive.

Councilmember Barbadillo read from the staff report about the drafting of the TASP. Lands for high density and preservation of four parcels of industrial parcels in the project area were identified. He asked why that was done or what were the decision makers thinking on this particular element of the Plan. Mr. Misner could not speculate. More comments were made on designations in the TASP and the city’s zoning map. City Attorney Chris Diaz clarified that there was an economic impact study for this proposal and staff had requested for a study session.

Mayor Tran was concerned about the jobs-to-residents ratio. Other services were affected, and he worried about water, public safety, if the city was equipped to protect additional residents, concern for crime in high density transit area, and was not sure about city wide movement to change land uses. They must do due diligence (students into a San Jose school district) and had not heard from that district. He wondered about City of San Jose and impacts to that city, as he wanted to be a good neighbor. The General Plan said to preserve land appropriately. He would not support this proposal.

Vice Mayor Grilli referred to her time on the school board, when Milpitas had petitioned East Side and Berryessa School Districts to keep the students from this area in Milpitas, but that was not accepted. She supported the proposed project and agreed it made sense to make this land all residential. She thought Council had given direction to staff back in January to have a study session, when the land use change for the mosque occurred. She felt Councilmember Phan laid out some good rationale for support.

Councilmember Nuñez understood this was the last piece that was not residential in the TASP, and that the Vice Mayor was correct to have a study city-wide on these land use changes, and look at community benefit. He was supportive.

Mayor Tran urged colleagues to think about affordable housing and housing for families. He could not support any more industrial to residential land change in Milpitas. He wanted to have homes in Milpitas for families, so people did not have to drive to Modesto. The No. 1 item was affordable housing.

Councilmember Phan wanted any future land use change, like this one, to be brought to the Economic Development Commission (beyond just the Planning Commission). He would like to have the study session as proposed.

Mayor Tran said he was a member of Transportation and Land Use Subcommittee, and not once did this project come before that body.

Councilmember Nuñez responded that such items did come to the Economic Development Commission in the past. Mr. Phan said he wanted to make that a requirement.

Councilmember Barbadillo said he had a process he went through to come to his decision. He further described how he came to his choice to oppose this change while he supported the preservation of industrial zones. Mixed use might be okay wherein there would be a balance.

Councilmember Nuñez would like to have a plan brought back to Council to get his hands around the General Plan, to get Economic Development office to drive bringing companies here, and retain services that were acceptable. The applicant here had met all criteria, he noted.

Motion:

1. Adopt Resolution No. 8700 adopting the Addendum to the Environmental Impact Report for the Transit Area Specific Plan.
2. Adopt Resolution No. 8701 approving the General Plan Amendment and the Transit Area Specific Plan Amendment.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3  
NOES: 2 (Barbadillo, Tran)

City Attorney Diaz read aloud the title of Ordinance No. 38.830 “An Ordinance of the City Council of the City of Milpitas Amending the City’s Zoning Map, Changing the Zoning Designation of 8.7 Acres from Industrial Park with Transit Oriented Development Overlay (MP-TOD) to Multiple Family High Density with Transit Oriented Development Overlay (R3-TOD) at 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard.”

Motion: to waive the first reading of Ordinance No. 38.830 beyond the title and to introduce the ordinance

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3  
NOES: 2 (Barbadillo, Tran)

Motion: to adopt Resolution No. 8702 approving the Vesting Tentative Map, Site Development Permit and Conditional Use Permit

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3  
NOES: 2 (Barbadillo, Tran)

City Council then took a break and returned to the dais at 10:21 PM.

## **UNFINISHED BUSINESS**

### **16. Classification & Compensation Study**

Human Resources Director Tina Murphy introduced the consultant from Ralph Andersen & Associates, Vice President Doug Johnson. He described the rationale for doing the “class & comp” study, and the method for the compensation survey. This was a customized one for the City of Milpitas (non-sworn personnel). He displayed a chart of Market Summary – Median, job titles with a bell curve overall showing jobs above/below market median. Also displayed was a chart that showed Milpitas employees versus 75<sup>th</sup> percentile. Mr. Johnson gave a summary of benefits analysis, where Milpitas was 1.2% above the median in the survey (salary) while 2.7% with base pay + cash and 3.6% above with base pay + cash + insurance.

Councilmember Nuñez asked when the City Council would get final numbers and the consultant replied, in a couple weeks. He referred to agenda item no. 9 earlier. Ms. Murphy explained about the Police Support Services Manager, which was not a classification yet in the city when the

study began, so that specific position wasn't included in the survey. Mr. Nuñez said he did not find any benefit to the report given.

Councilmember Phan asked the methodology on doing the survey. Mr. Johnson explained the research done by contacting the surveyed cities. Mr. Phan asked if more detailed information was available, to break it down by city. Mr. Johnson said yes. Mr. Phan asked about demographic breakdown and Ms. Murphy explained that in the survey, that was not done.

Mayor Tran asked the purpose of the study. Ms. Murphy said many City job descriptions were woefully outdated, and needed to be brought up to date. Also it was useful to see how Milpitas compared to market in terms of pay and benefits.

Councilmember Nuñez asked the City Attorney, could the report be used for Closed Session on labor negotiations. Mr. Diaz responded, yes, if the data was specific to bargaining groups.

Mr. Johnson stated staff would need direction from Council on where the City wanted the class/pay to be, overall, for example in the 50<sup>th</sup> or 75<sup>th</sup> percentile.

Councilmember Nunez wanted to understand why the fiscal impact of the staff report was listed as "none." He also requested to come back with more numbers, with known costs at the future report. He spoke of the expectation of employees to have their pay raised, when it was lower than a determined level in the survey results.

Mayor Tran thanked the Ralph Andersen & Associates consultant.

#### **17. Resolution for Censure Policy**

City Attorney Chris Diaz gave a presentation on the proposal for a censure policy for the City Council, by adoption of a resolution, to allow reprimanding of one member. This was presented in the past, but not voted upon.

Vice Mayor Grilli felt the policy should specify who would form the Ad Hoc Committee of two Councilmembers.

Councilmember Phan inquired what the implications of a censure were, if adopted. Mr. Diaz replied that sanctions could be imposed, by removing the person from a Committee and/or restricting travel.

Councilmember Barbadillo asked with regard to the Ad Hoc Committee, why there weren't some other intermediate steps, less than censure (e.g. for lesser offense). There ought to be perhaps degrees of punishment.

The City Attorney replied there could be admonishment, informal censure (reprimand) and then adopt a resolution for formal censure.

Councilmember Nuñez wondered what happened in other cities with such a policy.

Mr. Diaz said he could look at other cities' policies, and find those that have steps within the censure policy. Staff would not want to get involved in the process Council desired to follow.

Motion: to direct the City Attorney to come back to Council with a revised censure policy with intermediate steps included, and who decided which Councilmembers would serve on the Ad Hoc Committee, and bring it back next time on consent

Motion/Second:

Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSTAIN: 1 (Tran)

When it was approaching 12:00 AM, Councilmember Nuñez said perhaps the Council could take the most important item next and then end the meeting. The Acting City Manager responded that item no. 25 was required for action.

Mr. Pangelinan reported that on Thursday, October 5, the Council would schedule a special closed session meeting, so certainly they could add items for public discussion onto that agenda. By consensus, it was agreed that the meeting for Thursday, October 5 would start at 6:30 PM for all items that were not heard at this meeting along with a Closed Session matter.

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|-------------------------------------------------|---------------------------------------------------------------------------------------|
| 18. City Budget Process                         | This item was not heard.                                                              |
| 19. Contract Authority<br>(Ordinance No. 289.1) | This item was not heard.                                                              |
| 20. List of Council Items                       | This item was removed from the consent calendar but not heard. It would be continued. |

## REPORTS

- |                       |                                                                                       |
|-----------------------|---------------------------------------------------------------------------------------|
| 21. Homeless Strategy | This item had earlier been requested to be moved to the next regular meeting agenda.  |
| 22. Housing Issues    | This item was removed from the consent calendar but not heard. It would be continued. |

## RESOLUTIONS

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|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 24. Commissions                                                   | This item was removed from the consent calendar but not heard. It would be continued.                                                                                                                                                                                                                                                                                                                                                                           |
| 25. Resolution regarding<br>Appointment of Acting City<br>Manager | Human Resources Director Tina Murphy reviewed that City Council was asked to be in compliance with PERS regulations regarding hiring Steve Pangelinan as the Acting City Manager. The action must occur at a regular Council meeting (not special) so this evening was to ratify what occurred the prior week. He could serve as the Interim City Manager while the active recruitment was open for the City Manager job. His hourly rate of pay was explained. |

Motion: to ratify the previously adopted resolution by adopting Resolution No. 8704 and approve the first amendment to the employment agreement (related to hourly pay rate)

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of:	AYES: 5
	NOES: 0

## REPORTS of MAYOR & COUNCILMEMBERS

No reports were given.

## ADJOURNMENT

Mayor Tran adjourned the City Council meeting at 11:57 PM.

**The foregoing minutes were approved by Milpitas City Council on October 17, 2017.**

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**Mary Lavelle**  
**Milpitas City Clerk**